

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B. CIVIL WRIT PETITION NO. 7149/2005

Laxman Lilani
Vs.
Ajmer Vidhyut Vitran Nigam Ltd. & Anr.

Date of Order : 25/04/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.R.Singhvi for the petitioner.
Mr. Manoj Bhandari for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 30.11.2005 so far as it forfeits the salary of the petitioner other than subsistence allowance and a direction to the respondents to make full payment of salary for the entire period of suspension.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was facing a criminal trial.

During the pendency of the criminal case, the petitioner was placed under suspension. By the judgment and order dated 10.11.2003, the Special Judge, Anti Corruption Cases, Udaipur, in Case No.22/2001, acquitted the petitioner of the charges. After acquittal, the petitioner was reinstated. However, with regard to the period of suspension, no decision was taken as the matter was kept pending till completion of the departmental proceedings. In the departmental proceeding, vide order dated 10.9.2004, a penalty of censure was imposed upon the petitioner and it was ordered that no payment of suspension period will be made except the subsistence allowance already paid to the petitioner. The petitioner preferred an appeal against the order dated 10.9.2004 before the Chairman and Managing Director, Ajmer Vidhyut Vitran Nigam Limited (for short 'the appellate authority' hereinafter). The appeal preferred by the petitioner came to be partly allowed by the appellate authority vide order dated 30.11.2005 (Annex.5) and the order dated 10.9.2004 imposing penalty of censure was set aside. However, it was made clear that no payment of suspension period will be made except the subsistence allowance already paid/ drawn by the petitioner and his suspension period shall be treated on duty only for the pensionary benefits. Aggrieved by the order impugned dated 30.11.2005 (Annex.5) to the extent directing no payment of suspension period, the petitioner has filed the instant writ

petition. A reply to the writ petition has been filed by the respondents.

It is contended by learned counsel for the petitioner that Regulation 41 of the Rajasthan State Electricity Board Employees Service Regulations, 1964 deals with reinstatement after suspension, removal or dismissal. Regulation 41 (2) provides that where such competent authority holds that the employee has been fully exonerated or in the case of suspension that it was wholly unjustified, the employee shall be given the full pay and dearness allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be. Since the petitioner having been acquitted in the criminal case and the penalty of censure imposed in the departmental proceeding, has been set aside by the disciplinary authority, there could be no reason to withhold the salary for the period of suspension.

Learned counsel appearing for the respondents submits that the disciplinary authority imposed the punishment of censure as well as forfeiture of payment of suspension period except the subsistence allowance and that part has been maintained by the appellate authority.

Vide Annex.4 dated 10.9.2004 it is mentioned that a departmental enquiry was held against the petitioner and the enquiry officer submitted his enquiry report vide letter No.35 dated 31.7.2004 and has given his opinion/ recommendation that no departmental action against the petitioner is required/ proposed and requested to drop the disciplinary proceedings and also the Zonal Chief Engineer (U/Z), AVVNL, Udaipur vide his letter No.AVVNL/ZCE/UZ/UDR/Tech/F./D.53 dated 31.7.2004 has given his opinion that no disciplinary action is required to be initiated against the petitioner.

From the material placed on record and the conclusion arrived at by the appellate authority setting aside the penalty of censure imposed and the fact that the petitioner has been acquitted in the criminal case, in my view, there could be no justification for forfeiture of the salary for the period of suspension when the period of suspension has been directed to be considered as continuity in service for the pensionary benefit. The petitioner has already been paid the subsistence allowance as stated by the learned counsel for the parties for the period of suspension. In the circumstances therefore, the petitioner is also entitled for the balance of salary for the said period of suspension.

In the result, the writ petition is allowed. The order dated 30.11.2005 (Annex.5), forfeiting the payment of the suspension period except the subsistence allowance already paid to the petitioner, is set aside and it is ordered that the petitioner is entitled for the balance of salary for the said period of suspension and the increments flowing therefrom. No order as to costs.

(H.R.PANWAR),J.

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